IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

Bail Appl..No. 5098 of 2007()

CRIME NO.494/07 OF FORT KOCHI POLICE STATION

PETITIONERS: ACCUSED 1 & 4:

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1. DARSON ANTONY, S/O.ANTONY,
PEDIAKALPARAMBIL, HOUSE NO.IX/724,
PANDIKUDY DESOM, MATTANCHERRY VILLAGE.

2. K.J.JOSEPH, S/O.JOSEPH,
KURISINKAL VEEDU, XV/354, MOOLAMKUZHI DESOM,
RAMESWARAM VILLAGE.

BY ADV. SRI.R.SUDHISH
SMT.M.MANJU

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY S.I OF
POLICE, FORT KOCHI POLICE STATION,
THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/08/2007 ALONG WITH BA NO. 5130 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos.5098 & 5130 of 2007

Dated this the 18th day of August, 2007

ORDER

Applications for regular bail. The petitioners are accused 1, 3 and 4 in a crime registered, inter alia, under Sec.153-A of the IPC. The crux of the allegations is that there were some untoward incidents in connection with the conduct/celebrations of the Cochin Carnival. Proceedings have been initiated consequent to the untoward incidents which took place on that day. It is submitted that security proceedings have also been initiated against some persons.

2. Be that as it may, the allegation in the present case is that a group of persons constituted themselves into an unlawful assembly. They allegedly went to the house of the de facto complainant where the de facto complainant - a political activist, resides along with his wife and son - the son himself being a political activist. The de facto complainant and family

belong to the Muslim faith. Their landlady belongs to the Christian faith. The area, it is submitted, is inhabited predominantly by the members of the Christian community. The crux of the allegations is that the members of the unlawful assembly including the petitioners allegedly threatened the landlady of the building that she must immediately ensure eviction of the de facto complainant and family. It is alleged that the petitioners uttered words which were sufficient to cause communal disharmony. Those who owe allegiance to Muslim faith should not be permitted to occupy the buildings in that area, they allegedly stated. The alleged incident took place on 10/8/07. The petitioners were arrested on 11/8/07. Investigation is in progress.

3. The learned counsel for the petitioners submit that the petitioners are absolutely innocent. It is true that the petitioners are members of an organisation by name “Cochin Carnival Pythrika Samrakshana Forum”. The said organisation and its workers are not at all working to promote communal disharmony. In fact, they are interested only in ensuring the purity of the conduct of the Cochin Carnival. There were some disputes in respect of the conduct of such Carnival. The

petitioners and the said Forum had insisted that unauthorised occupants in the area be evicted. A mountain is made out of a mole hill. Totally false and vexatious allegations are being raised. In these circumstances, it is prayed that the petitioners may be granted regular bail.

4. The learned Public Prosecutor opposes the applications. The learned Public Prosecutor submits that the materials presently collected convincingly point to the complicity of the petitioners. The data collected indicate that the petitioners were involved in a campaign to ensure eviction of persons of Islamic faith residing in the locality. This certainly comes within the mischief of Sec. 153-A of the IPC, submits the learned Public Prosecutor. The learned Public Prosecutor submits that if this Court were inclined to grant bail, the Investigator may be given reasonable further time to complete the investigation and it may be ensured that the petitioners do not interfere with the law and order situation in the locality. Appropriate conditions to ensure the preservation of the law and order may be imposed on the petitioners by this Court, submits the learned Public Prosecutor.

5. In the nature of the contentions raised, it was felt that

the Case Diary and the materials collected must be placed before me. The Case Diary was placed before me for my perusal. I shall scrupulously avoid any detailed discussion on merit about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I have perused the Case Diary. I have been taken through the statements of the landlady of the de facto complainant and her son. I have been taken through the statements of the local witnesses who came to the scene of the occurrence on coming to know of the commotion. Suffice it to say that I am satisfied that it cannot be held that the allegations are unfounded. I am satisfied that the petitioners, who have remained in custody from 11/8/07, can now be directed to be released on bail subject to appropriate conditions. Such conditions can be imposed which shall ensure the interests of a fair, efficient and expeditious investigation and at the same time allay the apprehension aired by the learned Public Prosecutor.

6. **In the result:**

(a) These applications are allowed. The petitioners shall be released on bail on the following terms and conditions:

(i) The petitioners shall not be released from custody on

the strength of this order prior to 25/8/07. The Investigator shall, in the meantime, make every endeavour to complete the investigation.

(ii) The petitioners shall execute bonds for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(iii) The petitioners shall make themselves available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months from the date of their release.

(iv) Except for the purpose of complying with Condition No.(iii) above, the petitioners shall not enter the limits of Fort Kochi Police Station for a period of two months from the date of their release.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge